

1976 WL 30741 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 24, 1976

\*1 Representative Joseph R. Murray  
State House  
Columbia, South Carolina

Dear Representative Murray:

You have requested an opinion from this Office as to various ramifications of Act No. 1768 of 1972. 57 STAT. 3473 (1972). I shall respond to them in the order in which you have asked them.

1. The 1972 Act does create two separate and distinct special purpose districts, to wit: the North Charleston Sewer District ('Sewer District'), whose boundaries encompass that part of Charleston County which constituted the former North Charleston Consolidated Public Service District, including the City of North Charleston [See, 50 STAT. 870 (1957), as amended], and whose functions include the construction, operation and maintenance of sewer treatment and disposal systems, and the North Charleston Special District ('Special District'), whose boundaries are similar to those of the Sewer District, except that the City of North Charleston is not included therein, and whose functions include the construction, operation and maintenance of fire protection systems, street lighting systems, sanitation systems and the cleaning of streets within the Special District.

2. While the Act does create two distinct special purpose districts, only one Commission serves as the governing body of both districts, to wit:

The term 'Commission' shall mean the agency herein created to act as the governing body of the Sewer District and the Special District. 57 STAT. Act No. 1768, § 1(5) at 3473 (1972).

The question of dual office holding, proscribed by Article XVII, § 1A of the South Carolina Constitution, does not arise, then, because the members of the Commission hold only one office, notwithstanding the fact that the Commission serves as the governing body of two districts.

3. The Act provides that the nine members of the Commission are to be appointed as follows:

The Commission shall be composed of nine members, three of whom shall be appointed by the Governor upon the recommendation of City Council, and six of whom shall be appointed by the Governor upon the joint recommendation of a majority of the House members of the Charleston County Legislative Delegation and a majority of the Senators from Senatorial District Number 16. 58 STAT. Act No. 600, § 1 at 1092 (1973).

You have raised a question as to the constitutionality of that portion of the Act which authorizes the City Council of North Charleston to recommend the appointment of three members of the Commission in view of the fact that the Special District does not include the City of North Charleston.

Inasmuch as Act No. 1768 of 1972, as amended, has been enacted, this Office must presume the Act to be constitutional until and unless a court of law declares otherwise. If, however, an action were brought pursuant to the Uniform Declaratory Judgments Act [§§ 10-2001 *et seq.* of the Code], that portion of the Act which authorizes the City Council of North Charleston to recommend the appointment of three members of the Commission would, in my opinion, most

probably be declared violative of Article I, Section 3 of the State Constitution, to the extent that the Commission acts as the governing body of the Special District, inasmuch as the Special District does not include the City of North Charleston. See, e.g., [Ashmore v. Greater Greenville Sewer District](#), 211 S.C. 77, 44 S.E.2d 88 (1947); cf., [Moseley v. Welch](#), 209 S.C. 19, 39 S.E.2d 133 (1946).

With kind regards,

\*2 Karen LeCraft Henderson  
Assistant Attorney General

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